

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

**Item No.** 1.H  
**Mtg. Date** March 15, 2016  
**Dept.** Development Services (Planning Division)

**Item Title:** Request for Qualifications – Preparation of CEQA Compliance Documents for the General Plan Update

**Staff Contact:** David De Vries, Acting Development Services Director

**Recommendation:**

Authorize the release of a Request for Qualifications (**Attachment B**) to select a consultant to prepare the required California Environmental Quality Act (CEQA) compliance documents for the General Plan Update.

**Item Summary:**

Staff has drafted a Request for Qualifications (RFQ) (**Attachment B**) for City Council consideration. The intent of the RFQ is to identify qualified consultants in the preparation of required environmental documents, in accordance with CEQA, for the City's General Plan Update (expected adoption October 2016). Staff anticipates either a Program Environmental Impact Report (PEIR) or an update to the City's Master Environmental Impact Report (MEIR) will be required. Prior to presenting the RFQ for City Council input, staff sought comments from Claudia Tedford, Principal, with CityPlace Planning who is contracted to assist the City in its General Plan Update.

The staff report (**Attachment A**) provides a brief overview of the RFQ and the forthcoming process. Staff recommends that the RFQ be released.

**Fiscal Impact:**

The General Plan Update has a budget of \$150,000 for FY15/16, which is funded from the General Fund.

**Environmental Review:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review        | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [      ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> None                     | <input type="checkbox"/> Newsletter article   | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting |   |

**Attachments:**

- A. Staff Report
- B. Draft Request for Qualifications
- C. Sample Professional Services Contract



# Attachment A

## LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.H

Mtg. Date March 15, 2016

Item Title: **Request for Qualifications – Preparation of CEQA Compliance Documents for the General Plan Update**

Staff Contact: **David De Vries, Acting Development Services Director**

### Discussion:

Staff has drafted a Request for Qualifications (RFQ) for City Council consideration. The intent of the RFQ is to identify qualified environmental consultants (or consultant teams) with expertise and experience in drafting environmental documents for General Plan updates to ensure compliance with the California Environmental Quality Act (CEQA) and the 2003 State of California General Plan Guidelines.

Staff anticipates either a Program Environmental Impact Report (PEIR) or an update to the City's Master Environmental Impact Report (MEIR) will be required. A PEIR may be faster and less expensive and can analyze the General Plan Update as one project and a MEIR evaluates cumulative impacts and is intended to streamline the later review of future projects that comply with the updated General Plan. Staff's goal is to strategize with potential consultants on CEQA compliance alternatives, identify updates needed within the 1996 General Plan MEIR, identify a scope of work for CEQA compliance for the General Plan Update, and contract with a consultant that can prepare the necessary documents expeditiously, at a low or reasonable cost, and with the community's best interests in mind, especially as it relates to future development.

Prior to presenting the RFQ for City Council input, staff sought comments from Claudia Tedford, Principal, with CityPlace Planning and who is contracted to assist the City in the preparation of its General Plan Update.

The Draft RFQ outlines the scope of work and selection process in detail.

Staff will begin the selection process immediately and then conduct interviews with selected firms. Based on its evaluation, staff will present a recommendation to the City Council at the April 19, 2016 meeting. A sample professional services contract is attached.

### Conclusion:

Staff recommends that the City Council authorize the release of a Request for Qualifications to select a consulting firm to prepare the required CEQA compliance documents for the General Plan Update.



## REQUEST FOR QUALIFICATIONS

### CEQA COMPLIANCE DOCUMENTS FOR THE GENERAL PLAN UPDATE



City of Lemon Grove  
Development Services Department  
Planning Division

# Attachment B

RELEASE DATE: March 16, 2016

## REQUEST FOR QUALIFICATIONS

CEQA COMPLIANCE DOCUMENTS FOR THE GENERAL PLAN UPDATE

### IMPORTANT INFORMATION

**Release of RFQ:** March 16, 2016

**Responses Due:** March 30, 2016, 4:00 P.M.

**Interviews:** April 6, 2016

Responses must include the following:

- One original (unbound)
- Seven copies
- One electronic copy (in PDF format)

### **Addresses for Responses:**

Physical Address: City of Lemon Grove  
Attention: David DeVries, Acting Development Services Director  
3232 Main Street  
Lemon Grove, CA 91945

Email Address: [ddevries@lemongrove.ca.gov](mailto:ddevries@lemongrove.ca.gov)

**Proposed Award Date:** April 19, 2016

**Project Start Date:** April 20, 2016

**Contacts for Questions:** David DeVries, Acting Development Services Director  
[ddevries@lemongrove.ca.gov](mailto:ddevries@lemongrove.ca.gov)  
(619) 825-3812  
Miranda Evans, Assistant Planner  
[mevans@lemongrove.ca.gov](mailto:mevans@lemongrove.ca.gov)  
(619) 825-3813

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# Attachment B

## I. Intent

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The City of Lemon Grove (the "City") releases this Request for Qualifications (RFQ) with the intent to identify qualified environmental consultants (or consultant teams) with expertise and experience in drafting environmental documents expeditiously for General Plan updates to ensure compliance with the California Environmental Quality Act (CEQA) and the 2003 State of California General Plan Guidelines.

Firms that provide a response to this RFQ may be invited to participate in an interview process to further determine the organization's capacity to provide the services sought by the City.

## II. Background

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The City of Lemon Grove is located approximately ten miles east of downtown San Diego among many communities in San Diego County. The City encompasses 3.75 square miles and is largely bounded by the SR-94 to the north and the SR-125 to the east. The population is approximately 26,000. The City is largely a single-family residential community built mostly in the 40's, 50's, and 60's. The City houses a quaint downtown, "big box" commercial retailers, shopping centers, and surrounding these retailers are heavy commercial, light industrial, and higher density residential land uses. The San Diego Orange Line bisects the City from the north to the south and over half of the City is within a quarter mile a bus stop or trolley station.

The City Council recently identified an update to the Lemon Grove General Plan as a priority goal in FY15-16. The City Council contracted with the Cal Poly San Luis Obispo (SLO) Master in City & Regional Planning (MCRP) Design Studio on August 4, 2015 to provide public outreach, analyze the existing General Plan, prepare a community profile, and draft a general plan update. In January 2016, in order to build on the efforts of the SLO Design Studio, City staff contracted with CityPlace Planning and Circulate San Diego to lead community workshops related to the general plan and assist in the review of the SLO Design Studio's draft general plan. CityPlace Planning prepared the City's 2014 Health & Wellness Element and the City of Vista's general plan (adopted in 2012).

The City's General Plan was adopted in 1996. Subsequently, the City has adopted the 2001 Broadway Commercial Project Specific Plan, the 2005 Downtown Village Specific Plan, the 2006 Bikeways Master Plan, the 2010-2020 Housing Element, and the 2014 Health & Wellness Element. The following provides further detail on the preferred timeline for the adoption of the updated general plan:

- Tuesday, February 16, 2016 at regularly scheduled City Council meeting – Public outreach overview and review of draft ideas for considerations and feedback from City Council (completed).
- March 2016 – Request for Qualifications (RFQ) for consultants to prepare EIR. Contract awarded (in progress).
- February to June 2016 – General Plan update drafted by SLO Design Studio in coordination with City staff, CityPlace Planning, and Circulate San Diego. Additional contract work will be required after the SLO Design Studio team provides their final deliverables (in progress).
- June 2016 – Public hearing to review draft to City Council. Public Noticing commences.



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- July 2016 – Public hearing to review revised final draft to Council. CEQA and State Clearinghouse noticing process commences.
- October 2016 – City Council adopts general plan update and certifies final EIR.

It is worth noting that Rick Engineering Company has been contracted to prepare an expanded Downtown Village Specific Plan and will include traffic and land use analysis of the expanded downtown area. The preparation of the background report and technical analysis has commenced and public outreach is expected to begin in March 2016. Staff intends to make the expanded Downtown Village Specific Plan area into a Special Treatment Area for the draft general plan (placeholder) which will be replaced with the new Specific Plan with an expected adoption date in mid to late 2017.

### **III. Proposed Scope of Services**

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The RFQ seeks a consultant to complete six activities related to the preparation of CEQA compliance documents for the General Plan Update. These activities include:

- 1) Scoping – Identify appropriate environmental documents to obtain CEQA compliance for the General Plan Update. The City desires the ability to streamline environmental review of future projects in compliance with the General Plan Update as a result. Confirm availability of existing data and obtain additional data needed. Draft required notices. Conduct scoping meeting and prepare record of comments.
- 2) Prepare Technical Studies - Several technical analyses will need to be prepared to inform both the development of portions of certain elements of the General Plan, and to prepare the environmental analysis. It is anticipated the following technical studies would be required, but other studies may be needed: transportation study, noise, greenhouse gas (GHG) assessment, biological assessment, cultural and historic resource assessment including Tribal consultation, geology and soils, hazards and hazardous materials, and hydrology and water quality. The consultant's response should identify any additional studies that may be required.
- 3) Prepare Draft CEQA Compliance Documents – Prepare the Draft in accordance with state CEQA guidelines and State General Plan Guidelines and any applicable local or state laws. The following tasks are anticipated:
  - a. Complete all necessary analyses and related assessments including program alternatives, cumulative impacts, discussion of Growth Inducing and Cumulative impacts;
  - b. In conjunction with the City, develop appropriate alternatives for analysis;
  - c. Prepare a Mitigation, Monitoring and Reporting Program (MMRP);
  - d. Prepare GIS maps;
  - e. Provide no less than two screenchecks for City staff review;
  - f. Incorporate City staff comments into public review draft;
  - g. Prepare a public review draft; and
  - h. Provide necessary copies and Notice of Completion for the State Clearinghouse.

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- 4) Resolve Concerns – If appropriate, amend the Draft based on public comments received and resubmit for feedback. Continue this activity until appropriate concerns are resolved.
- 5) Prepare the Final CEQA Compliance Documents – Prepare response to comments, make any needed revisions, Prepare a Statement of Overriding Considerations if needed, and prepare a final document with technical appendices.
- 6) Attend City Council certification hearings.

### **IV. Response to this Request for Qualifications**

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Responses to this Request for Qualifications are due on **March 30, 2016, 4:00 P.M.**. Responses must include one original (unbound), seven copies and an electronic copy (in PDF format). The original and unbound copies should be mailed or delivered to the following address:

City of Lemon Grove  
Attention: David DeVries, Acting Development Services Director  
3232 Main Street  
Lemon Grove, CA 91945

The electronic copy should be emailed to [ddevries@lemongrove.ca.gov](mailto:ddevries@lemongrove.ca.gov).

The response should include the following information:

- 1) Cover Letter – provide a letter, signed by an officer of the consulting firm authorized to contractually bind the firm, stating that the firm is willing to enter into a mutually developed agreement and final scope of work with the City of Lemon Grove.
- 2) Project Personnel – identify the proposed project manager and support team. Include key personnel from subcontractor or consulting partners. Include a one paragraph summary resume for each key team member.
- 3) Discussion of Similar Projects – identify similar projects that the consulting firm has completed. For each project, include dates of involvement, status of the project, project budget, and reference contact information (name and title of contact with his/her email address and phone number).
- 4) Rate Sheet – for prime consultant and all proposed subcontractors.
- 5) Scope of Work & Project Strategy – relying on the proposed scope of work found in Section III of this RFQ, provide the following:
  - Proposed method to accomplish work or Revised Scope of Work,
  - Project phases and tasks as available,
  - Project Timeline and Timing of each phase as available,
  - Deliverables if known, and
  - Optional deductibles or add-ons.
- 6) Additional Funding – identify if the consultant firm can secure additional funding to augment the scope of work. If so, City staff will follow-up verbally regarding the response.

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- 7) Insurance – provide evidence that the consulting firm can meet the City’s insurance requirements identified in Section VI of this RFQ.

### **V. Selection Process**

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City staff will evaluate responses to the RFQ, with a focus on:

- Experience and technical competence (specialized experience, record of performance, strength of key personnel and experience with similar local government agencies),
- Proposed scope of work, method to accomplish work, deliverables and time schedules,
- Quality and initiative demonstrated in responding to the RFQ, and
- Ability to provide deliverables and responses in a short turnaround time.

City staff may conduct interviews with selected consulting firms or may ask for additional information. Based on its evaluation, staff will finalize a scope of work with a selected firm and will present an agreement for professional services to the Lemon Grove City Council for consideration.

### **VI. Terms & Conditions**

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- 1) Issuance of this RFQ does not commit the City to award a contract, or to pay any costs incurred in the preparation of a response to this request. The City retains the right to reject all submittals. Selection is also dependent upon the negotiation of a mutually acceptable contract with the successful respondent and approval by the City Council. The contract shall be in the form attached to this proposal.
- 2) The firm selected to perform the scope work shall be required to provide evidence of public liability and property damage insurance with limits of not less than \$1 million per occurrence for all covered losses and not less than \$2 million general aggregate for injury to, or death of, one or more persons and/or property damage arising out of a single accident or occurrence, insuring against all liability of the City, the selected firm and its authorized representatives, arising out of, or in connection with, the performance of work pursuant to this RFQ. Professional liability insurance (errors and omissions) shall be required of the firm in the minimum amount of \$1 million dollars. The insurance shall be provided at the sole cost and expense of the firm(s) selected.
- 3) As a general rule, all documents received by the City are considered public records and will be made available for public inspection and copying upon request. If you consider any documents submitted with your response to be proprietary or otherwise confidential, please submit a written request for a determination of whether the documents can be withheld from public disclosure no later than ten (10) days prior to the due date of your response. If you do not obtain a determination of confidentiality prior to the submittal deadline, any document(s) submitted will be subject to public disclosure.



**AGREEMENT  
BY AND BETWEEN  
THE CITY OF LEMON GROVE  
AND  
\*CONSULTANT\***

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and \*CONSULTANT\*, a professional environmental firm (the "CONTRACTOR").

**R E C I T A L S**

WHEREAS, the CITY desires to employ a CONTRACTOR to provide professional environmental services.

WHEREAS, the CITY has determined that the CONTRACTOR is a professional environmental firm and is qualified by experience, specific project knowledge, and ability to perform the Project Manager and supporting environmental services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY hereby agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services required hereunder will be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **SCOPE OF SERVICES.** The CONTRACTOR will perform services for the preparation and certification of California Environmental Quality Act (CEQA) Compliance Documents for the General Plan Update as further defined in the attached Exhibit "A" beginning on page 13.

The CONTRACTOR shall be responsible for providing services for the preparation and certification of California Environmental Quality Act (CEQA) Compliance Documents for the General Plan Update consistent with the budget and scope of work in Exhibit "A". The CONTRACTOR shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY and as referenced in Exhibit "A". The CONTRACTOR shall appear at meetings cited.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

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## 3. **PROJECT COORDINATION AND SUPERVISION.**

David DeVries, Acting Development Services Director hereby is designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONTRACTOR shall assign a single professional analyst to act as the Project Director, or Principal in Charge, to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONTRACTOR. **\*PRINCIPAL IN CHARGE\*** thereby is designated as the Project Director for the CONTRACTOR.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and also materials, if any. The total cost for all work described in Exhibit "A" shall not exceed the base amount of **\*TO BE DETERMINED\***, without prior written authorization from the City's Project Manager. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "A" as determined by and in the sole discretion of the CITY.

The CONTRACTOR shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** The duration of this agreement will be until November 30, 2016 unless an extension is otherwise mutually agreed upon and approved.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the CONTRACTOR discharges the City of all of the City's payment obligations and liabilities under this agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY and CONTRACTOR thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONTRACTOR's

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written work product for the CITY's purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venturers with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or subcontractors, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees except as herein set forth, and the CONTRACTOR expressly agrees not to represent that the CONTRACTOR or the CONTRACTOR's agents, servants, or employees are in any manner agents, servants or employees of the CITY, it being understood that the CONTRACTOR, its agents, servants, and employees are as to the CITY wholly independent contractors and that the CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONTRACTOR, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession. Submittals Required with the Agreement. Failure of the

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CONTRACTOR to provide the following documentation with the executed agreement will cause delay in the agreement being executed by the City:

- A. Insurance as specified in Section 15 of this agreement;
- B. Taxpayer Identification Number (W-9)  
<http://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- C. IRS Letter of Non-Profit 501 (c) (3) (If Applicable);
- D. City Business License;

## **11. STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR's professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

D. City's Right to Terminate for Default. If the CONTRACTOR fails to perform or adequately perform any obligation required by this agreement, the CONTRACTOR's failure constitutes a Default. If the CONTRACTOR fails to satisfactorily cure a Default within ten (10) calendar days of receiving a written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the CONTRACTOR, and any person claiming any rights by or through the CONTRACTOR under this Agreement. The rights and remedies of the City enumerated in this paragraph are cumulative and shall not limit the City's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or enacted or established at a later date, that may be available to the City against the CONTRACTOR.

**12. NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for



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training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

**13. CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

**14. INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, and its officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, agents, and subcontractors in the performance of services under this Agreement. CONTRACTOR's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONTRACTOR's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONTRACTOR expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY 's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

**15. INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

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B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include hired and non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of \$1,000,000 combined single limit per occurrence, covering all personal injury, bodily injury and property damage arising out of its operation under this Agreement. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

D. Workers' compensation insurance covering all of CONTRACTOR's employees. The CONTRACTOR shall comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement. That policy shall provide a minimum of \$1,000,000 of employer's liability coverage, and the CONTRACTOR shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. If any required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

G. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

H. Deductibles. All deductibles on any policy shall be the responsibility of the CONTRACTOR

I. **Specific Provisions Required.** Each policy required under this section shall expressly provide, and an endorsement shall be submitted to the City, that:

1. Said policies, except for the professional liability and worker's compensation policies, shall name the CITY and its officers, agents and employees as additional insureds. The CITY's Additional Insured status must be reflected on additional insured endorsement form CG 2012, or equivalent, which shall be submitted to the CITY.

2. The Policies cannot be canceled, non renewed or materially changed except after thirty (30) calendar days prior written notice by the CONTRACTOR to the CITY by certified mail, as reflected in an endorsement which shall be submitted to the CITY except for non-payment of premium, in which case ten (10) days notice will be provided.

3. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

## Attachment C

4. The CONTRACTOR may obtain additional insurance not required by this Agreement.

16. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

17. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principles, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

If a third part dispute or litigation, or both, arises out of, or relates in any way to the services provided under this Agreement, upon the City's request, the CONTRACTOR, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The CONTRACTOR's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

18. **TERMINATION.** A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 30-day's written notice to the CONTRACTOR. During said 30-day period the CONTRACTOR shall perform all services in accordance with this Agreement. The CONTRACTOR may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the City of its obligations under this Agreement including but not limited to payment of invoices..

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the City's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR's breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 6.

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

F. The termination of the services shall be effective upon receipt of the notice by the CONTRACTOR.

## Attachment C

19. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To the CITY: David De Vries, Acting Development Services Director  
City of Lemon Grove  
3232 Main Street  
Lemon Grove, CA 91945-1701

To the CONTRACTOR: \*PRINCIPAL IN CHARGE\*  
\*CONSULTANT\*  
\*CONSULTANT ADDRESS\*

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

20. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

If the CONTRACTOR violates any conflict of interest laws or any of these provisions in this section, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Contractor to liability to the CITY for attorney fees and all damages sustained as a result of the violation.

☒ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONTRACTOR shall:

## Attachment C

1. Go to [www.fppc.ca.gov](http://www.fppc.ca.gov)
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed contracts.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONTRACTOR.

### **21. MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

## Attachment C

L. Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

### CITY OF LEMON GROVE

### **\*CONSULTANT\***

*(Corporation – signatures of two corporate officers)*

*(Partnership – one signature)*

*(Sole proprietorship – one signature)*

By: \_\_\_\_\_  
Lydia Romero  
City Manager

By: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

### APPROVED AS TO FORM

By: \_\_\_\_\_  
James P. Lough  
City Attorney

By: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

## Attachment C

### EXHIBIT "A"

[Insert Scope of Work Here]